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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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JOSEPH A CALVARUSO ESQ
MORGAN FINNEGAN L L P
345 PARK AVENUE
NEW YORK, NY 10154-0053

EXAMINER

SEMBER, THOMAS M

ART UNIT

PAPER NUMBER

2875

DATE MAILED: 02/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/557,835

Applicant(s)

Blusseau et al

Examiner

Thomas Sember

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Nov 25, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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Response to amendment

Claim Rejections - 35 U.S.C. § 112

1. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- 1.) In claim 1 “lines 8-9 “the central axis so as to create different angular offset between two zones.” is vague and indefinite because it is idiomatically incorrect.
- 2.) In claim 8 “lines 12-13 “the central axis so as to create different angular offset between two zones.” is vague and indefinite because it is idiomatically incorrect.

Claim Rejections - 35 U.S.C. § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-11 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. .

- 1.) Applicant now claims in newly amended claims 1 and 8 “at least two zones of

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different maximum light intensities.” The original specification only supported “two distinct zones of maximum light intensity.” These two recitations are very different. There is nothing in the specification to support that intensity in one zone is different than intensity in another zone. The applicant’s specification and drawings only support two distinct zones with two areas of maximum intensity.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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5. Claims 1-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,409,369. Although the conflicting claims are not identical, they are not patentably distinct from each other because U.S. Patent 6,409,369 claims the same invention but merely uses slightly different language..

Claim Rejections - 35 U.S.C. § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(f) he did not himself invent the subject matter sought to be patented.

7. Claims 1-11 are rejected under 35 U.S.C. 102(f) as being by De Lamberterie. De Lamberterie discloses a light source 10 and optical reflector 20 (Tc1 and Tc2) adjacent to the light source for producing a beam which is generally spread widthwise with respect to the axis of the road, wherein the said optical reflector is adapted to create in said beam at least two zones of different maximum light intensities, wherein said optical reflector has a central axis passing through the light source in the beam direction, and is asymmetrical along a plane on the central axis so as to create different angular offsets between two zones.

Assuming the applicant somehow overcomes the 112, first paragraph rejection, the following 102 rejections apply:

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Claim Rejections - 35 U.S.C. § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-11 are rejected under 35 U.S.C. 102(b) as being by Staiger et al. Staiger et al discloses a light source 3 and optical reflector 1 adjacent to the light source **for** producing a beam which is generally spread widthwise with respect to the axis of the road, wherein the said optical reflector is **adapted** to create in said beam at least two zones 8 of different maximum light intensities, **wherein** said optical reflector has a central axis passing through the light source in the beam direction, and is asymmetrical along a plane on the central axis so as to create different angular offsets between two zones.

Claim Rejections - 35 U.S.C. § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

11. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Jiao et al ('138). Jiao et al ('224) discloses a light source 8 and optical reflector 20 adjacent to the light source for producing a beam which is generally spread widthwise with respect to the axis of the road,

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wherein the said optical reflector is adapted to create in said beam at least two zones (see figure 3) of different maximum light intensities, wherein said optical reflector has a central axis passing through the light source in the beam direction, and is asymmetrical along a plane on the central axis so as to create different angular offsets between two zones.

Response to Arguments

12. Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection.

Regarding the Staiger et al reference, applicant's arguments are not found persuasive.

The applicant argues that Staiger et al clearly avoid the creation of zones having different intensities. However, besides not being supported in the specification, this limitation is only **functionally** claimed. The applicant only uses functional terms such as "**adapted**" to claim applicants' invention. The headlight of Staiger et al still meets the claim because the headlight is still **capable** of creating two distinct zones having different maximum light intensities.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas M. Sember whose telephone number is (703) 308-1938. The examiner can normally be reached on Monday - Thursday from 8:00 AM - 5:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea, can be reached at (703) 305-4939. The fax phone number for this group is (703) 308-7724.

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Any inquiries of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 305-4900.

A handwritten signature in black ink, appearing to read 'Thomas M. Sember', written in a cursive style.

Thomas M. Sember

Primary Examiner

February 5, 2003